

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

13 Cary R. Cadonau
Stephen H. Buckley
14 BROWNSTEIN RASK
1200 S.W. Main Street
15 Portland, OR 97205

16 || Attorneys for Plaintiffs

18 HUBEL, Magistrate Judge:

19 On November 4, 2011, the plaintiffs filed a Complaint under
20 the Employee Retirement Income Security Act of 1974, 29 U.S.C.
21 § 1001 et seq., and the Labor Management Relations Act of 1947, 29
22 U.S.C. § 141 et seq., seeking to recover from the defendant unpaid
23 contributions to the Plumbers and Pipefitters National Pension Fund
24 (the "National Fund"); the U.A. Union Local No. 290 Plumber,
25 Steamfitter and Shipfitter Industry Pension Trust; the U.A. Union
26 Local No. 290 Plumber, Steamfitter and Shipfitter Industry Health
27 and Welfare Trust; the U.A. Union Local No. 290 Plumber,
28 Steamfitter & Shipfitter Industry Retiree Health Trust; the United

1 Association Local 290 Apprenticeship and Journeyman Training Trust
2 Fund; the U.A. Union Local No. 290 Plumber, Steamfitter and
3 Shipfitter Industry Vacation, Scholarship and Educational
4 Reimbursement Trust; and the Plumbing and Piping Management Trust
5 Fund (the "Management Fund") (collectively, the "Trust Funds").
6 Dkt. #1. The two plaintiffs in this case are , first, the Trustees
7 of the Trust Funds, and second, the Plumbers, Steamfitters and
8 Marine Fitters Local No. 290 (the "Union"). *Id.*, ¶ 1.

9 John Craig, registered agent for the defendant John Craig
10 Plumbing, LLC, was served personally on November 8, 2011. Dkt. #3.
11 He failed to move or plead in response to the Complaint, and on
12 January 10, 2012, the undersigned entered default against the
13 defendant. Dkt. #7. The plaintiffs now move default judgment
14 against the defendant. Dkt. #8; see Dkt. ##9 & 10.

15 The present action deals with the time period from April 2010
16 through May 2011 (the "period at issue"). Dkt. #1, ¶ 10. During
17 that entire time period, the defendant was signatory to a
18 Compliance Agreement (the "Agreement"), which required the
19 defendant, among other things, to make contributions to the Trust
20 Funds on behalf of applicable employees, pay union dues to the
21 Union, and file monthly remittance reports and forms. See Dkt.
22 #10, ¶¶ 2-3; Dkt. #10-1. The defendant failed to pay all amounts
23 owed under the terms of the Agreement. Dkt. #1, ¶¶ 13, 18, 22-23;
24 Dkt. #9; Dkt. #10, ¶¶ 8-13.

25 In addition to requiring monthly contributions to the Trust
26 Funds, the Agreement provides for liquidated damages and interest
27 upon default, Dkt. #10, ¶ 6, 8-13; attorney fees, *id.*, ¶ 14; and
28 liquidated damages and interest on unpaid Union dues, *id.*, ¶ 15.

1 The plaintiffs' First Claim for Relief seeks liquidated
2 damages and interest on various unpaid contributions and union dues
3 for the period at issue. Dkt. #1, ¶¶ 10-16. The plaintiffs have
4 submitted Remittance Report forms from the defendant, and monthly
5 statements from the Trust Funds, evidencing that the defendant owes
6 \$3,341.78 in liquidated damages and interest to all of the
7 plaintiffs except the National Fund. Dkt. #9, ¶ 3 & Ex. A; see
8 Dkt. #10, ¶¶ 6-13 & 15, & Exs. C through I.

9 The plaintiffs' Second Claim for Relief seeks reimbursement
10 for unpaid contributions to the Trust Funds and unpaid Union dues
11 for the period at issue, plus applicable liquidated damages and
12 interest on those unpaid contributions. Dkt. #1, ¶¶ 17-20. The
13 plaintiffs have submitted the defendant's Remittance Report forms
14 evidencing amounts owed for the period at issue, and spreadsheets
15 prepared by the plaintiffs' counsel, with input from Al Shropshire,
16 the Union's Chief Executive Officer and a Trustee of the Trust
17 Funds, evidencing that the defendant owes unpaid contributions and
18 dues for the period at issue in the total amount of \$20,021.44;
19 liquidated damages of \$2,485.67; and interest, as of November 1,
20 2011, of \$2,639.15; with interest continuing to accrue on unpaid
21 contributions to the Trust Funds except the Management Fund (i.e.,
22 \$19,327.02) at the rate of 12% per annum from November 2, 2011,
23 through entry of judgment; and interest on the unpaid Union dues
24 (i.e., \$446.20) continuing to accrue at the rate of 9% per annum
25 from November 2, 2011, through entry of judgment. Dkt. #9, ¶ 9 &
26 Ex. B; see Dkt. #10, ¶¶ 6-13 & 15, & Exs. C through I.

27 The plaintiffs' Third Claim for Relief sought recovery of
28 \$483.92 in unpaid interest under a February 2011 settlement

1 agreement relating to certain unpaid contributions, union dues,
2 liquidated damages, interest, and attorney fees and costs. Dkt.
3 #1, ¶¶ 21-25. The plaintiffs' counsel Cary Cadonau states the
4 plaintiffs now have recovered that sum, and the plaintiffs request
5 dismissal of their Third Claim for Relief. Dkt. #9, ¶ 5.

6 The plaintiffs seek attorney fees in the case in the amount of
7 \$1,757.50, representing 9.25 hours of attorney time at \$190 per
8 hour. See Dkt. #9, ¶ 7 & Ex. C, itemization. In addition, they
9 seek costs in the amount of \$406.00. *Id.*, ¶ 8. The court finds
10 these amounts to be reasonable and proper in light of the services
11 performed and results obtained in this action.

12 The plaintiffs further request an order "[a]llowing [them] to
13 retain the right to conduct a future payroll examination of
14 Defendant's books and records in order to ensure that all required
15 fringe benefit contributions and union dues have been paid," and to
16 institute further legal proceedings if they find further evidence
17 of unpaid contributions or dues. Dkt. #9, ¶ 5. The plaintiffs
18 have not cited any authority for this type of relief. The
19 plaintiffs' right to proceed with further investigation or
20 litigation will be governed by applicable law. The court finds it
21 would be sufficient to note that the judgment in this case is
22 limited to the records currently available from the defendant,
23 without limitation to any action to recover further amounts shown
24 to be due if additional evidence comes to light, subject to any
25 applicable law.

26 I therefore recommend the plaintiffs' motion for default
27 judgment be **granted in part and denied in part**, as follows:

28

1 1) The plaintiffs' motion to dismiss their Third Claim for
2 Relief should be **granted**.

3 2) On the plaintiffs' First Claim for Relief, the defendant
4 should be ordered to pay to all of the plaintiffs except the
5 National Pension Fund the sum of **\$3,341.78**.

6 3) On the plaintiff's Second Claim for Relief, the defendant
7 should be ordered to pay:

8 a) unpaid contributions and dues in the amount of
9 **\$20,021.44**;

10 b) liquidated damages of **\$2,485.67**;

11 c) interest, as of November 1, 2011, of **\$2,639.15**;

12 d) accrued interest from November 2, 2011, to March 27,
13 2012, on unpaid contributions to the Trust Funds except the
14 Management Fund (i.e., \$19,327.02) in the amount of **\$927.10**,
15 and continuing to accrue at the rate of 12% per annum (**i.e.**,
16 **\$6.35 per day**) from March 28, 2012, through entry of judgment;
17 and

18 e) accrued interest from November 2, 2011, to March 27,
19 2012, on the unpaid Union dues (i.e., \$446.20) in the amount
20 of **\$16.06**, and continuing to accrue at the rate of 9% per
21 annum (**i.e.**, **\$.11 per day**) from March 28, 2012, through entry
22 of judgment.

23 4) The judgment expressly should be limited to the records
24 currently available from the defendant, without limitation to any
25 action to recover further amounts shown to be due if additional
26 evidence comes to light, subject to any applicable law.

SCHEDULING ORDER

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due by **April 16, 2012**. If no objections are filed, then the Findings and Recommendations will go under advisement on that date. If objections are filed, then the Findings and Recommendations will go under advisement on the date of filing.

IT IS SO ORDERED.

Dated this 27th day of March, 2012.

/s/ Dennis J. Hubel

Dennis James Hubel
United States Magistrate Judge